



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTON
ATTORNEY GENERAL**

June 27, 1989

Honorable Irma Rangel
State Representative
District 37
P. O. Box 2910
Austin, Texas 78768-2910

LO-89-52

Dear Representative Rangel:

You ask about the application of the Texas nepotism statute, article 5996a, V.T.C.S., to a certain school district employee. The nepotism statute prohibits a school board member from voting for or confirming the hiring of a person to whom he or another board member is related within the second degree by affinity or within the third degree by consanguinity.

You ask about an employee who began working for a school district on August 25, 1986. In the spring of 1987 her contract was renewed for the 1987-88 school year. On April 4, 1987, after her contract was renewed, her first cousin was elected to the school board. Because first cousins are related within the second degree by consanguinity, Attorney General Opinion O-4670 (1942), the question arose as to whether the school board could vote to renew the employee's contract in the spring of 1988.

Section 1(b) of article 5996a provides:

Nothing herein contained, nor in any other nepotism law contained in any charter or ordinance of any municipal corporation of this State, shall prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty for the following period prior to the election or appointment, as applicable, of the officer or member related to such employee in the prohibited degree:

(1) at least 30 days, if the officer or member is appointed;

(2) at least six months, if the officer or member is elected at an election other than the general election for state and county officers; or

(3) at least one year, if the officer or member is elected at the general election for state and county officers.

Because school board members are elected at an election other than the November general election for state and county officers, section 1(b)(2) is applicable to your question. See Educ. Code § 22.02 (election of school board members). Because the employee in question was employed by the school district for more than six months when her cousin was elected to the school board, section 1(b) would appear to permit the renewal of her contract in the spring of 1988.

You are concerned, however, about whether section 1(b) actually applies to the employee in question because at the time her cousin was elected to the school board, the amount of prior continuous service required to allow the continued employment of an employee related to a school board member was one year. See Acts 1987, 70th Leg., ch. 427, § 1, at 1988-89 (setting out a six-month prior continuous employment requirement for relatives of officials elected at elections other than general election; effective August 31, 1987); Acts 1985, 69th Leg., ch. 152, at 682-83 (setting out a one-year prior continuous service requirement).

Because prior continuous service is measured by continuous employment before the election of the related board member, the employee's prior continuous service was fixed at the time of her cousin's election in April 1987. However, any nepotism violation would have occurred when her contract was renewed in the spring of 1988. Bean v. State, 691 S.W.2d 773, 775 (Tex. App. - El Paso 1985, pet. ref'd); see also Attorney General Opinion O-6330 (1945). Therefore, we think the law in effect at that time of her contract renewal would govern whether she could be allowed to continue in her employment. Consequently, in order for her to be continued in her employment by operation of section 1(b), she would need to have six months of prior continuous service.

We also call your attention to section 1(c) of article 5996a, which provides:

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When a person is allowed to continue in an office, position, clerkship, employment, or duty because of the operation of Subsection (b) of this section, the Judge, Legislator, officer, or member of the governing body who is related to such person in the prohibited degree shall not participate in the deliberation or voting upon the appointment, reappointment, employment, confirmation, reemployment, change in status, compensation, or dismissal of such person, if such action applies only to such person and is not taken with respect to a bona fide class or category of employees.

In light of our answer to your first question, we need not address your question about article 5996g, V.T.C.S.

Yours very truly,

Sarah Woelk
Letter Opinion Section
Opinion Committee

SW/lcd

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